

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

FEDERAL HOME LOAN MORTGAGE
CORPORATION,

Plaintiff,

vs.

DONALD GILBERT “AND ALL OTHERS”,

Defendant,

and

ANDREA LEE GILBERT,

Counter-Plaintiff/Third Party Plaintiff,

vs.

FEDERAL HOME LOAN MORTGAGE
CORPORATION,

Counter-Defendant, and

WELLS FARGO BANK, N.A. f/k/a WELLS
FARGO HOME MORTGAGE, INC.,

Third Party Defendant.

Case No. 2:14-cv-02509-SHL-cgc

STIPULATIONS OF FACT AND LAW

On April 29, 2015, the Court granted the Motion for Summary Judgment filed by Federal Home Loan Mortgage Corporation (“Freddie Mac”) and Wells Fargo Bank, N.A. (“Wells Fargo”). [Doc. 59]. This order dismissed all remaining counterclaims and third party claims filed by Defendant/Third Party Plaintiff Andrea Gilbert (“Ms. Gilbert”). Accordingly, the only remaining claims are for Freddie Mac’s unlawful detainer claim, and corresponding claim for an

award of back rent pursuant to Tenn. Code Ann. § 29-18-131(b). On June 10, 2015, the Court entered an order striking all affirmative defenses filed by Ms. Gilbert and denying her Motion to Alter or Amend the grant of summary judgment. [Doc. 77].

In light of the affirmative defenses having been stricken, the parties stipulate that no material issues of fact remain to be tried as to the remaining unlawful detainer claim and stipulate to the entry of final judgment thereon in favor of Freddie Mac, such stipulation being expressly subject to the terms and the reservation of rights by Ms. Gilbert provided hereinbelow. In order to effectuate entry of final judgment, Freddie Mac and Ms. Gilbert are stipulating to certain facts and conclusions of law. However, Freddie Mac understands and agrees that Ms. Gilbert is stipulating to these facts and conclusions of law and entry of judgment based solely on the current posture of the case, and Freddie Mac and Ms. Gilbert consent and agree that, notwithstanding this stipulation, Ms. Gilbert expressly retains and reserves, without any restrictions or limitations, any and all of her rights to appeal the final judgment and all other orders entered in this case, and without limitation of the issues that may be raised on appeal, and expressly retains and reserves, and does not waive any and all other rights and privileges appertaining to Ms. Gilbert relative to this litigation, all of which rights and privileges are expressly reserved to and preserved for the benefit of Ms. Gilbert. Accordingly, Freddie Mac and Ms. Gilbert stipulate to the following:

- 1) The property at issue is located at 980 Jones Chapel Drive, Williston, Tennessee 38057 (the “Property”).
- 2) On August 4, 2003, Donald and Andrea Gilbert obtained a loan from Wells Fargo Home Mortgage, Inc. in the original principal amount of \$159,025.00 (the “Loan”). To secure repayment of the Loan, Donald and Andrea Gilbert conveyed the Property

- via deed of trust to Arnold M. Weiss, as Trustee for Wells Fargo Home Mortgage, Inc. (the “Deed of Trust”). The Deed of Trust was recorded on August 11, 2003, in Book D686, Page 492, Register’s Office of Fayette County.
- 3) On August 30, 2010, Shellie Wallace, acting as Successor Trustee and Matthew Smith, acting as Co-Trustee of the Deed of Trust, conducted a foreclosure sale of the Deed of Trust, and Wells Fargo Bank, N.A. was the high bidder, bidding the sum of \$159,423.90. Wells Fargo Bank, N.A. assigned its bid to Freddie Mac, and a Trustee’s Deed was executed by Shellie Wallace, conveying the Property to Freddie Mac (the “Trustee’s Deed”). The Trustee’s Deed was recorded on September 3, 2010, as Instrument No. 10004769, Register’s Office of Fayette County.
 - 4) The Trustee’s Deed establishes Freddie Mac’s constructive possession of the Property. *Fed. Nat’l Mortg. Ass’n v. Robilio*, No. W2007-01758-COA-R3-CV, 2008 WL 2502114, at *4 (Tenn. Ct. App. June 24, 2008).
 - 5) Under paragraph 22 the Deed of Trust, following a foreclosure sale, “Borrower, or any person holding possession of the Property through Borrower, shall immediately surrender possession of the Property to the purchaser at the sale. If possession is not surrendered, Borrower or such person shall be a tenant at will of the purchaser and hereby agrees to pay the purchaser the reasonable rental value of the Property after sale.”
 - 6) Ms. Gilbert is currently residing at the Property and refuses to surrender possession to Freddie Mac. This fact establishes Ms. Gilbert’s unlawful detainer. *Robilio*, 2008 WL 2502114, at *4.

- 7) Freddie Mac agrees to waive its claim to back rent under Tenn. Code Ann. § 29-18-131(b) and the undersigned parties hereby stipulate to the dismissal of this claim, without prejudice, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii).
- 8) Because the facts currently before the Court establish that Freddie Mac is entitled to possession of the Property, the undersigned parties hereby stipulate to the Court's entry of final judgment awarding possession of the Property to Freddie Mac.
- 9) Freddie Mac and Ms. Gilbert consent and agree that, notwithstanding this stipulation, Ms. Gilbert expressly retains and reserves, without any restrictions or limitations, any and all of her rights to appeal the final judgment and all other orders entered in this case, and without limitation of the issues that may be raised on appeal, and expressly retains and reserves, and does not waive any and all other rights and privileges appertaining to Ms. Gilbert relative to this litigation, all of which rights and privileges are expressly reserved to and preserved for the benefit of Ms. Gilbert.

STIPULATED TO, this 25th day of June, 2015.

/s/ Bret J. Chaness

Bret J. Chaness (BPR # 31643)

Natalie K. Brown (BPR # 22452)

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**SIGNED ONLY FOR PURPOSES
OF STIPULATING TO DISMISSAL:**

/s/ Bradley E. Trammell (by BJC w/ permission)

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